Jurisdictional Statement

81-1078

Office - Supreme Court, U.S.
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ALEXANDER L. STEVAS,
CLERK

No.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1981.

BERNARD A. GELLER,
PETITIONER,

v.

THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT,
AND,
THE MERIT SYSTEMS PROTECTION BOARD,
AND,
THE DEPARTMENT OF THE NAVY,
RESPONDENTS.

Jurisdictional Statement.

BERNARD A. GELLER, *Pro Se*,
Apartment 9F,
21 Beacon Street,
Boston, Massachusetts 02108.
(617) 227-3295

Questions Presented.

I. Whether the removal of the Petitioner and the subsequent decision of the MSPB, issued on 23 April 1980 complied with required procedures, were supported by substantial evidence, or were arbitrary, capricious, or an abuse of discretion.

II. Whether the order of the MSPB, dated 14 October 1980, denying Petitioner's petition for review of its initial decision issued on 23 April 1980 was arbitrary, capricious, or an abuse of discretion.

III. Whether the decision of the United States Court of Appeals for the First Circuit, dated September 3, 1981, is to be reviewed.

A List of All the Parties to the Proceeding in the Court Whose Judgment Is Sought to Be Reviewed

THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

THE MERIT SYSTEMS PROTECTION BOARD

THE DEPARTMENT OF THE NAVY

THE DEPARTMENT OF JUSTICE

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Table of Authorities.

5 U.S.C. 706	not cited
5 U.S.C. 4304-4304	not cited
5 U.S.C. 7701	not cited
5 U.S.C. 7512, 7513	not cited
5 U.S.C. 7703	
5 U.S.C. 1201.114-115	not cited

H.R. Rep. No. 95-1717, 9th Cong., 2d Sess. 143 (Oct. 5, 1978), Conference Report on Civil Service Reform Act

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RESPONDENTS.

Jurisdictional Statement.

Official and Unofficial Reports of Any Opinions Delivered in the Courts or Administrative Agencies Below

Camero v. *United States*, 345 F.2d 798 (Ct. Cl. 1965)	not cited
Doe v. *Hampton*, 566 F.2d 265 (D.C. Cir. 1977)	not cited
Giles v. *United States*, 553 F.2d 647 (Ct. Cl. 1977)	not cited
Penna v. *United States Army Corps of Engineers*, 490 F. Supp. 442 (S.D.N.Y. 1980)	not cited
Toohey v. *Nitze*, 429 F.2d 1332 (9th Cir. 1970), *cert. denied*, 400 U.S. 10022	not cited
Wells v. *Harris*, No. RR-80-3-(MSPB 17 December 1979)	not cited

Jurisdictional Statement

i) *The Nature of the Proceeding*

Appellant has filed suit in the Supreme Court within 90 days after receipt of denial of order respecting Petition for Rehearing of Case No. 80-1763 of the United States Court of Appeals For the First Circuit.

The statutory basis for Federal jurisdiction is 5 U.S.C. 7703.

ii) *The Date of the Entry of the Judgment Sought to be Reviewed*

September 3, 1981

The Date of the Order Respecting A Rehearing

September 11, 1981

The Date the Notice of Appeal was Filed

November 9, 1981

The Court in Which It was Filed

The United States Court of Appeal for the First Circuit

iii) *The statutory provision believed to confer jurisdiction of the appeal on this court*

5 U.S.C. 7703

The Regulations that the Case Involves

5 U.S.C. 706	not cited
5 U.S.C. 4304-4304	not cited
5 U.S.C. 7701	not cited
5 U.S.C. 7512, 7513	not cited
5 U.S.C. 7703	
5 U.S.C. 1201.114-115	not cited
H.R. Rep. No. 95-1717, 9th Cong., 2d Sess. 143 (Oct. 5, 1978), Conference Report on Civil Service Reform Act	

Concise Statement of the Case

This case is a petition for review of a final decision of the United States Court of Appeals for the first circuit issued September 3, 1981 in case No. 80-1763.

This is also a petition for review of a final decision of the MSPB, BNO75209048, issued as an initial decision on 23 April 1980. It is also a petition for review of the MSPB's Order of 14 October 1980, denying Petitioner's request for review of the initial decision. The initial decision became final on 19 October 1980, 5 days after the MSPB's 14 October order.

A Statement of the Reasons Why The Questions Presented Are So Substantial

1. The petitioner's testimony at the hearing conducted October 25, 1979 is sufficient to prove preponderantly that the decision of April 23, 1980 should have been in petitioner's favor.

2. The decisions of October 14, 1980 and September 3, 1981 thereby allow virtually *arbitrary removal* of federal employees, in contradiction to the intent of the Civil Service Reform Act.

Appendix.

[FACSIMILE] [SEAL]

MERIT SYSTEMS PROTECTION BOARD
BOSTON FIELD OFFICE
100 Summer Street, Room 1736
Boston, Massachusetts 02110 April 23, 1980

Mr. Bernard A. Geller
21 Beacon Street Apt. 9F
Boston, MA 02109

Dear Mr. Geller:

Enclosed is a copy of the initial decision in the appeal described below.

Appeal of: Bernard A. Geller

Action appealed: Removal, CASDO, Portsmouth Naval Shipyard, Portsmouth, NH

Initial decision: Agency action sustained

Sincerely yours,

Harry Grossman
Presiding Official

Enclosure

cc: Office of the Secretary
Merit Systems Protection Board
1717 H Street, N.W.
Washington, D.C. 20419

Office of Policy Analysis
Office of Personnel Management
Attn: Ms. Jeannette Neville
1900 E Street, N.W., Room 3508
Washington, D.C. 20415

cc: Office of Deputy Managing Director
Merit Systems Protection Board
1717 H Street, N.W.
Washington, D.C. 20419

Office of Special Counsel
Merit Systems Protection Board
1717 H Street, N.W.
Washington, D.C. 20419

UNITED STATES OF AMERICA
MERIT SYSTEMS
PROTECTION BOARD

BERNARD A. GELLER

v. BN07520948

DEPARTMENT OF THE NAVY

ORDER

The Board, having fully considered appellant's petition for review of the initial decision issued on April 23, 1980, and finding that it does not meet the criteria for review set forth at 5 C.F.R. 1201.115, hereby DENIES the petition.

This is the final order of the Merit Systems Protection Board in this appeal. The initial decision shall become final five days from the date of this order. 5 C.F.R. 1201.113(b).

Appellant is hereby notified of the right to seek judicial review of the Board's action as specified in 5 U.S.C. 7703. A petition for judicial review must be filed in the appropriate court no later than thirty (30) days after appellant's receipt of this order.

FOR THE BOARD:

October 14, 1980
(Date)

Robert E. Taylor
Secretary

Washington, D.C.

United States Court of Appeals

FOR THE FIRST CIRCUIT

No. 80-1763.

BERNARD A. GELLER,
PETITIONER,

v.

MERIT SYSTEMS PROTECTION BOARD
and DEPARTMENT OF THE NAVY,
RESPONDENTS.

DECREE

Entered: September 3, 1981

This cause came on to be submitted on briefs on petition for review of an order of the Merit Systems Protection Board.

Upon consideration whereof, It is now here ordered, adjudged, and decreed as follows: The decision of the Merit Systems Protection Board is affirmed, and the petition for review is denied.

By the Court:

/s/ DANA H. GALLUP
Clerk.

A True Copy
Attest:
Dana H. Gallup
Clerk

[Cert. c: Merit Systems Protection Board, Mr. Geller, and Ms. Boylan]

Date: 9 November 1981

From: Bernard A. Geller, Petitioner

To: Dana H. Gallup, Clerk of United States Court of Appeals for the First Circuit

Subj: Notice of Appeal

Parties Taking the Appeal:
Bernard A. Geller, Petitioner

Judgment Appealed From: No. 80-1763

Date of Entry of Judgment: September 3, 1981

Statute under which the appeal is taken: 5 U.S.C. 7703

Encls: (2)

In reference to Rule 10 of *The Rules of the Supreme Court of the United States*, I request to appeal the judgment in case number 80-1763. Enclosure (1) is proof of service.

Yours sincerely,

Bernard A. Geller

Encl (1)

Proof of Service

I, Bernard Arthur Geller, Petitioner, hereby state that on or before 9 November, 1981 I have served foregoing Notice of Appeal by first class, certified mail to the parties listed in enclosure (2).

Yours sincerely,

Bernard A. Geller

ENCL (2)

ADDRESSES OF THE PARTIES

Dana H. Gallup, Esquire
Clerk
Clerk's Office
United States Court of Appeals For the First Circuit
1602 John W. McCormack
Post Office and Courthouse
Boston, MA 02109

Robert E. Kopp, Esquire
Acting Director
Appellate Staff
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